

### **Brief History:**

The following are prior elections that have impacted alcohol sales in Frisco:

1. In 2002, City voters approved the sale of beer and wine for off-premise consumption in the City. The voters also approved on-premise consumption of beer, wine and liquor if a business applies for and receives a permit from the Texas Alcohol and Beverage Commission (TABC) for a “food and mixed beverage certificate holder.” A food and mixed beverage permit holder may not have alcohol sales exceed fifty percent (50%) of their gross revenue.
2. In 2008, the Council passed an ordinance that allowed mixed beverage permit holders to sell alcohol to 2:00 a.m. (Late Night Hours ordinance). A referendum petition to have the ordinance decided by election ensued, and the voters repealed the Late Night Hours ordinance on May 10, 2008. In 2014, the City Council called a special election to determine whether to repeal the prior disapproval of the Late Night Hours ordinance. The 2008 election that set aside the Late Night Hours ordinance was repealed in the 2014 special election. After that election, the City Council passed a new Late Night Hours ordinance on November 18, 2014 which allows a business with a mixed beverage permit to sell alcohol to 2:00 a.m.
3. In 2009, an election was held in Justice Precinct 2, Denton County, Texas and the voters approved package goods stores (e.g., liquor stores) and mixed beverages sales (e.g., bars) for the area contained in that precinct.

### **Overview:**

Today, businesses that have a food and mixed beverage certificate holder permit may sell alcohol for **on-premise consumption**, but their alcohol sales must not exceed fifty percent (50%) of gross revenue. The TABC, not the City, enforces these regulations through reports the business is required to provide to the TABC.<sup>1</sup> If seventy-five percent (75%) or more of a restaurant’s gross revenues is from the sale of alcohol in any quarter, it is deemed an Alcoholic Beverage Establishment under Frisco’s zoning ordinance. Private Clubs and Alcoholic Beverage Establishments do not have a cap on their alcohol sales; however, Private Clubs must have adequate food for their members and guests.

The sale of alcohol for **off-premise consumption** is limited to beer and wine except in Justice Precinct 2, Denton County, where all alcoholic beverages may be sold. In addition, Precinct 2 allows the sale of all alcoholic beverages for on-premise consumption without an alcohol sale percentage cap on gross revenues.

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<sup>1</sup> If a food and beverage permit holder exceeds the allowable cap on alcohol sales, it is in violation of its permit and subject to enforcement by the TABC.

## **Questions and Facts:**

### **1. Can Frisco regulate alcohol business locations?**

Yes, but its right to regulate is limited by the Texas Alcohol and Beverage Code ("Code"). The City Charter prohibits alcohol businesses in residential areas. The City, by ordinance, restricts alcohol businesses from being within three hundred (300) feet from private and public schools, churches (worship facilities) and public hospitals. The distance may be expanded to one thousand (1000) feet upon request by a school.<sup>2</sup> Also, zoning regulations that were adopted before June 11, 1987 may be enforced. Finally, the City regulates by a Specific Use Permit process in certain zoning districts the location of: (1) a business that sells alcohol for on-premises consumption which derives seventy-five percent (75%) or more of its gross revenue from the on-premise sale of alcohol; and (2) a sexually oriented business. Below are examples of Frisco's zoning and distance regulations:

- A. Alcohol Beverage Sales (beer and wine sales for off-premise consumption) are limited to the following zoning districts: Retail, Old Town Commercial, Commercial 1 and 2, and Highway.<sup>3</sup> Alcohol Beverage Sales are specifically prohibited in residential districts.<sup>4</sup>
- B. Private Clubs are limited to the following zoning districts with a *Specific Use Permit*: Office-2, Retail, Old Town Commercial, Highway, Commercial-1 and 2, Information and Technology, and Industrial.<sup>5</sup> A Private Club may operate in Agricultural and several residential districts *as an accessory use but a Specific Use Permit is required*.<sup>6</sup> Private Clubs do not have alcohol sale limits but they are required to have adequate food for their members and guests.
- C. Alcoholic Beverage Establishments (businesses that sell alcohol for on-premise consumption and such alcohol sales are seventy five percent (75%) or more of its gross revenue) are allowed with a *Specific Use Permit* in the following zoning districts: Office-2, Retail, Old Town Commercial, Highway, Commercial 1 and 2, Information Technology, and Industrial. The Zoning Ordinance also allows Alcoholic Beverage Establishments in many residential districts as an accessory use in conjunction with a golf course.<sup>7</sup>

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<sup>2</sup> Distance requirements are greater for private clubs and alcohol beverage establishments.

<sup>3</sup> Frisco Zoning Ordinance Subsection 3.02.01 (A) (24) b. c. & d.

<sup>4</sup> Frisco City Charter sec. 9.06.

<sup>5</sup> Frisco Zoning Ordinance Subsection 3.02.01 (A) (25) b. 1.

<sup>6</sup> Frisco Zoning Ordinance Subsection 3.02.01 (A) (25) b. 2.

<sup>7</sup> Frisco Zoning Ordinance Subsection 3.02.01 (A) (2) b 1 & 2.

- D. The City's minimum distance restriction for Alcoholic Beverage Establishments and Private Clubs is eight hundred feet (800) from a church (worship facility), public and private school, public hospital and residential zoning districts.<sup>8</sup>
- E. An alcohol business with a Food and Mixed Beverage Certificate Holder permit may not derive more than fifty percent (50%) of its gross revenues from the sale of alcohol for on-premise consumption. These businesses are treated similar to a restaurant for zoning locations.<sup>9</sup> They are also subject to the three hundred foot (300') distance limitation from schools, public hospitals, and religious facilities, except this distance limitation does not apply along Main Street in the Old Town Commercial District.

**2. What is a Specific Use Permit and how is it obtained?**

A Specific Use Permit is a zoning amendment that allows a use of the property that is not permitted outright in the applicable zoning district. The process requires a zoning change, so notice and a public hearing is required before the Planning and Zoning Commission makes a recommendation to the City Council. The City Council ultimately decides whether to grant the Specific Use Permit and that approval is subject to City Council discretion. The Specific Use Permit runs with the property. It may be revoked but requires the same zoning process to do so.

**3. Can the City establish more restrictive regulations than what is currently in place?**

No. The Code exclusively governs alcohol regulations. Except in limited instances where the Code allows more restrictive regulations to be imposed, which Frisco has done, the City is preempted from imposing additional rules.

**4. What types of alcohol sales are currently allowed in Frisco?**

- A. Beer and wine may be sold for off-premise consumption (e.g., convenience and grocery stores).
- B. Private Clubs are permitted to sell all types of alcohol for on-premise consumption with a Specific Use Permit that is approved by the City Council.
- C. Food and Mixed Beverage Permit Holders are allowed to sell all types of alcohol for on-premise consumption (e.g., restaurants that serve alcohol).

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<sup>8</sup> Frisco Zoning Ordinance Subsections 3.02.01 (A) (2) c and (25) c.

<sup>9</sup> Frisco Zoning Ordinance Subsection 3.02.01 (A) (30).

- D. Alcoholic Beverage Establishments (businesses that receive seventy-five percent (75%) or more of their gross revenues from alcohol sales) are allowed to sell all types of alcohol for on-premise consumption if they obtain a Specific Use Permit approved by the City Council.
- E. Property located in Justice Precinct 2, Denton County may have package goods stores (e.g., liquor stores) and an alcohol business that has no limit on the sale of all types of alcohol beverages for on-premise consumption. - See 5 below.

**5. Why are there fewer restrictions on alcohol sales in Precinct 2, Denton County without a City election authorizing them?**

In 2009, a local option election for that precinct was held by Denton County for the sale of all alcoholic beverages including mixed beverages and that proposition was approved by the precinct voters. This proposition effectively allowed liquor stores and bars. State law allows a precinct to vote to change its alcohol status without majority City voter approval even though the precinct is located within the City limits.

**6. What happens if the ballot proposition passes?**

Package goods stores, sometimes referred to as liquor stores will be allowed in the City. These businesses sell alcohol for off premise consumption and will continue to be prohibited in residential districts but may locate throughout the City subject to zoning and distance limitations set out in 1. above. This also applies to businesses that have a drive-thru purchase of alcohol operations.

Businesses with a food and mixed beverage certificate for on-premise consumption (e.g., restaurant) may elect to obtain a mixed beverage permit from the TABC. A mixed beverage permit does not have an alcohol sale percentage cap, thus the ability to increase alcohol sales at the restaurant is unlimited. The City is limited to regulating their location if the sale of alcohol of the business is equal to or exceeds seventy-five percent (75%) of its gross revenues and applying the eight hundred foot (800) distance limitation and requiring a Specific Use Permit. See 1. above.

Private Club permittees may still continue to operate and are subject to the location restrictions and Specific Use Permit requirements mentioned in 1. above.

**7. If the proposition fails, how does that affect alcohol sales in Frisco?**

If the proposition is not approved, there is no change to the current regulations-they remain in effect. Please refer to 4. above for the current allowable alcohol sales.

**8. Under current regulations (and without this proposition), would it be possible for the City Council to approve package goods stores within selected areas of the City and its Extraterritorial Jurisdiction?**

No. The Council authority is limited to what the voters have approved as to the alcohol status of the City (or in a justice precinct). Except for Justice Precinct 2 in Denton County, package goods stores are not permitted. Currently, beer and wine sales for off-premise consumption are allowed. With the limited exceptions for residential districts and the distance limitations outlined in response 1, a business that sells beer and wine for off-premise consumption must be treated similarly to other retail businesses that do not sell alcohol.

**9. If the proposition passes, what is the alcohol sale limit for mixed beverage permit holders (on-premise consumption)?**

None. State law does not have a cap on alcohol sales for this type of permit.

**10. If the proposition passes, can the City regulate the location of a mixed beverage permittee (on-premise consumption) that derives seventy-five percent (75%) or more of its gross sales from alcohol?**

The City may regulate their location, and it has already adopted those regulations. See responses 1. & 4.